BAR BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION

LEADING ARTICLES

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BAR BULLETIN

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VOL. 15 FEBRUARY, 1940 No. 6

STATE BAR COMPLIMENTS US

THE January meeting of members of the Association, the arrangements for which were made and carried out by the Junior Barristers' Committee, was one of the most successful in years. Both as to attendance and program it was a striking example of the initiative and efficiency of the junior members, and a demonstration of the work they are doing.

Fortunately, many members of the Board of Governors of the State Bar were able to be present. It is a real pleasure to print the resolution of the Board commending the program and the work of the Juniors, as follows:

"RESOLVED, That the Board of Governors thanks the Los Angeles Bar Association first for its invitation to its dinner on the night of January 18, and second for a most delightful evening. The Board also desires to sincerely congratulate the Los Angeles Bar Association and the Junior Barristers upon the work which they are doing. The Board believes the objects for which the State bar was organized can only be attained by the individual members of the bar working in unison. This can best be done through local bar associations, their work being coordinated through the State Bar. The work of the Junior Barristers and meetings such as the one of January 18 are certain to have a material effect in the ultimate improvement of the administration of justice."

KEEPING FAITH

"Law, lawyers and judges have their faults . . . but, let our critics, if they will—search the ends of the earth for a land where right and justice prevail to a greater extent than here—where we with all our frailties give sponsorship to the rule of just law and decent living."

"When, empty handed, our critics have returned—let them admit, as they should, that in America—lawyers and judges have protected and preserved liberty when elsewhere executives and legislators were trampling it under their feet."
—Hon. John C. Knox at the Sixty-first Annual Meeting of the New York Bar Ass'n.

LAWYERS, LOOK OUT!

By Whitney Harris, of the Los Angeles Bar

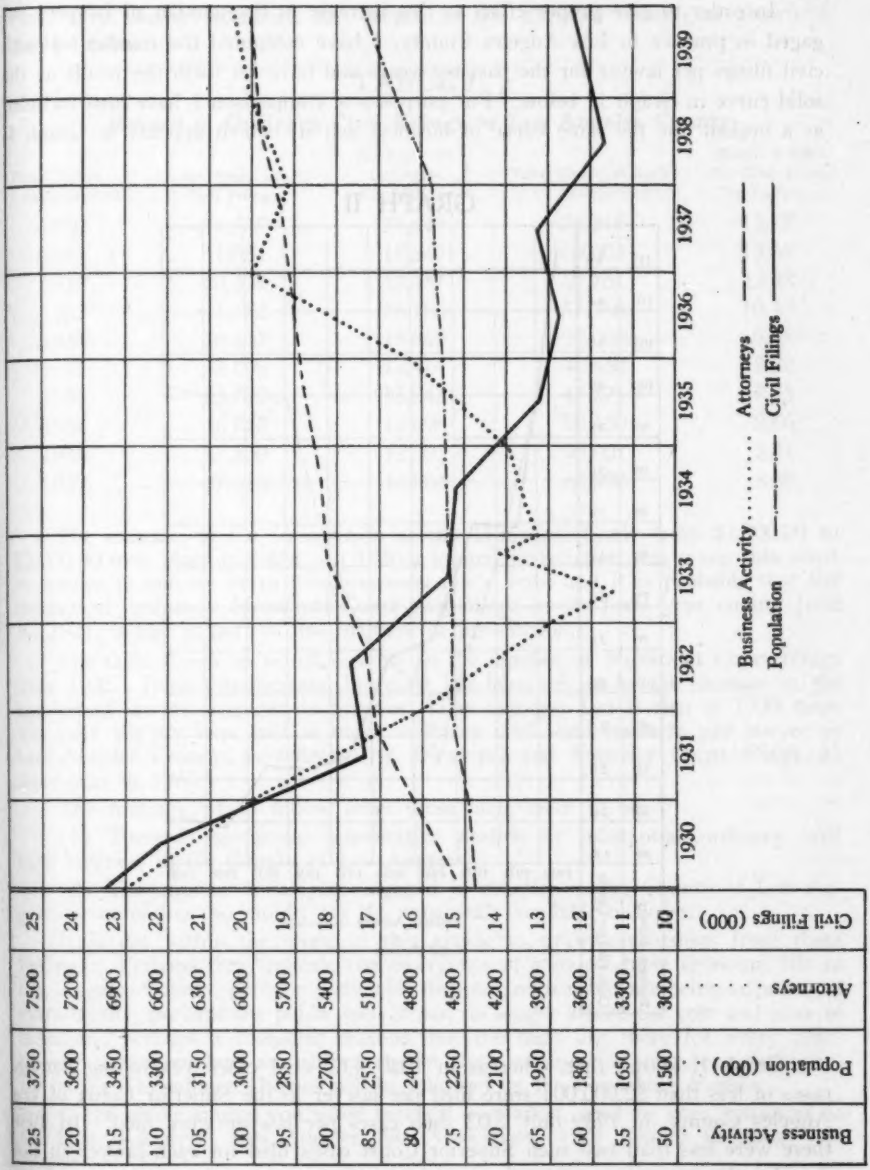
ON the opposite page is graphic proof of the plight of the local bar. We have had no "return to prosperity." For bankers, brokers, merchants and manufacturers, business is now almost normal—for lawyers and the courts, business is not only subnormal, it is subdepressed.

Graph I gives the trends of business activity, population, attorneys and civil filings in Los Angeles County from 1929 through 1939. Business activity is adapted from the Business Index of the Los Angeles Chamber of Commerce; it is comprised of the following factors: bank debits, building permits, department store sales, telephones in use and industrial employment. Population is taken from the published estimates of the Los Angeles Chamber of Commerce, and is thought to be conservative. Attorneys are the number of lawyers practising in Los Angeles County according to the records of the State Bar. Civil filings include all Superior Court civil cases, excluding damage cases of less than $2,000.00.

Superior Court cases have been selected for the analysis because in substantial litigation lies the principal justification for our professional talents and the principal source of our professional emoluments.

Graph I shows that in spite of a steadily expanding population and greatly improved business activity since 1933 in Los Angeles County, for the past eleven

GRAPH 1

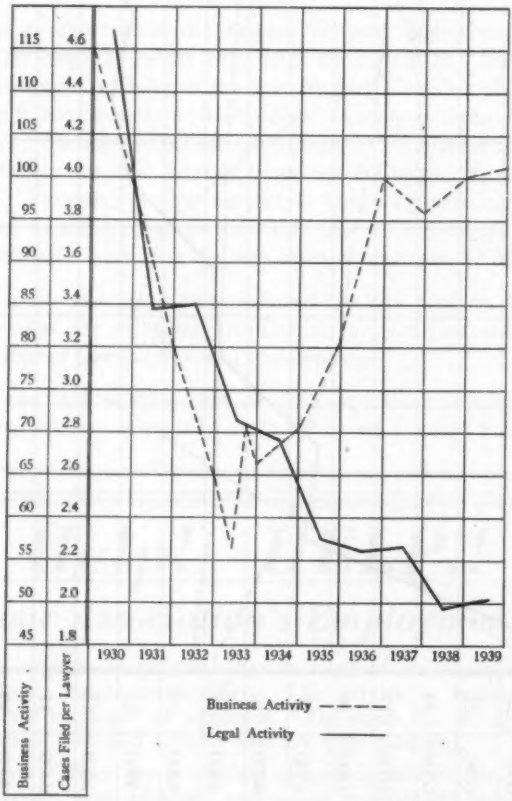


Business Activity	Population (000)	Attorneys	Civil Filings (000)
125	3750	7500	25
120	3600	7200	24
115	3450	6900	23
110	3300	6600	22
105	3150	6300	21
100	3000	6000	20
95	2850	5700	19
90	2700	5400	18
85	2550	5100	17
80	2400	4800	16
75	2250	4500	15
70	2100	4200	14
65	1950	3900	13
60	1800	3600	12
55	1650	3300	11
50	1500	3000	10

years there has been a steady and rapid decline in civil filings. During this same period the number of lawyers engaged in practice in the County of Los Angeles, has steadily increased, with the result that in 1939 there were a third more lawyers seeking one-half as much Superior Court legal business as in 1929.

In order to give proper effect to this increase in the number of lawyers engaged in practice in Los Angeles County, I have computed the number of such civil filings per lawyer for the past ten years and have set forth the result as the solid curve in Graph II below. For purposes of comparison I have also included as a broken line the same curve of business activity which appears in Graph I.

GRAPH II



Graph II shows that, whereas in 1930 4.67 civil cases (excluding damage cases of less than $2,000.00) were filed per lawyer in the Superior Court of Los Angeles County, in 1939 only 2.02 such cases per lawyer were filed. In 1938 there were less than two such Superior Court cases filed for each lawyer in Los Angeles County.

It might be expected that this depressing decline in the number of Superior Court filings would be explained and compensated in part by a transfer of cases from the Superior to the Municipal Court. Municipal court litigation has, how-

ever, very closely paralleled the decline in the Superior Court, as shown in Table I below.

TABLE I

Record of Ordinary Civil Filings in Los Angeles County

Fiscal Years Ending June 30	All Munic. Ct. Civil Filings	All Sup'r Ct. Ordinary Civil Filings	Total Munic. & Sup'r Ct. Civil Filings	Munic. & Sup'r Ct. Civil Filings Per Lawyer
1930	51,575	23,640	75,215	15.77
1931	51,654	18,249	69,903	13,69
1932	49,304	18,457	67,761	12.88
1933	41,172	16,186	57,358	10.49
1934	36,143	15,865	52,008	9.45
1935	33,176	13,474	46,650	8.32
1936	33,792	13,283	47,075	8.25
1937	36,732	13,698	50,430	8.66
1938	37,500	12,301	49,801	8.41
1939	37,616	12,864	50,480	8.39

The increase in the jurisdiction of the Municipal Court from $1,000.00 to $2,000.00 took place in 1929. In 1930 a limited jurisdiction was given this court in actions to enforce or to foreclose mechanic's liens, and it is probable that the absence of decline in Municipal Court civil filings in the fiscal year ending June 30, 1931, is due in part to this increase in jurisdiction.

The table shows an actual increase in the number of Municipal Court filings since 1935. Even this increase, however, has been off-set by the increase in the number of lawyers engaged in practice. The unhappy fact is that in 1939 there was only slightly over half as much ordinary civil legal business per lawyer in Los Angeles County, as reflected by Municipal and Superior Court filings, as there was in 1930.[1]

The findings which follow from these facts seem to be:

(1) There is an actual quantitative decline in substantial ordinary civil legal business in the County of Los Angeles.

(2) The number of lawyers engaged in practice in the County of Los Angeles is increasing too rapidly for the apparently available business.

It is not within the scope of this article to draw conclusions from these findings. Perhaps they indicate the emergence of a more stable economic life in Los Angeles County, perhaps justiciable disputes remain but are being adjudicated extra-legally, perhaps the public feels it can no longer afford the cost and time of litigation; perhaps a thousand reasons, but the facts are there for every practitioner to contemplate, and ultimately for the profession to solve, or—perhaps—for us the Threadbare Thirties will be followed by the Famishing Forties.

If the above causes you some cerebral cogitation, send in your comment to the BAR BULLETIN, Los Angeles Bar Association, 1124 Rowan Building, Los Angeles.

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[1]It should be noted that criminal, domestic relations, probate and guardianship filings have held up well during this decade, there being very nearly as much of this type of business per lawyer in 1939 as in 1930. In 1938 there were .71 criminal cases, 2.38 domestic relations cases and 1.79 probate and guardianship matters filed per lawyer in the Superior Court of Los Angeles County.

TOO MANY BRIEFS—AND TOO LONG

JUSTICE EDMONDS OF SUPREME COURT, DISCUSSES CAUSES OF DELAY IN THAT TRIBUNAL

IN a frank discussion of the causes of delay in disposing of cases by the Supreme Court, Justice Douglas L. Edmonds chided lawyers for filing too long and too many briefs. Before the monthly meeting of members of the Los Angeles Bar Association, Justice Edmonds said that in the 33 months from October 1, 1936, to June 30, 1939, 546 cases were heard and decided; of those which were original appeals in civil cases only about one-half had three briefs; 40% of them had either four or five briefs, and the remainder from six to fourteen briefs. In appeals where a petition for hearing was granted following decision by a district court of appeal, a greater number of briefs per case were filed. In only 20 per cent of these cases were there three briefs. In 25 per cent of them there were from seven to fifteen briefs. The others had from four to six each.

But that was not the worst of it. He had tabulated the number of pages in the briefs in 90 per cent of the appeals from judgments in civil actions and found that in more than half of them the briefs were 200 pages or less; that in a "very large number they ran between 200 and 500 pages; in some, 500 to 1000 pages, and in four, exceeded 1200 pages." These figures include briefs of *amici curiae* who appeared in 25 per cent of all civil appeals. As many as nine *amici* briefs were filed in one case.

"The present volume is not," he said, "an 'intolerable burden' as asserted by the State Bar's Committee, being considerably less than that of the New York Court of Appeals, and about the same as the Supreme Court of Pennsylvania, each of which is practically up with its work." Why then, he asked, is there the present congestion of cases in the Supreme Court of California? He answered his own question with the statement that in his "considered opinion" it is principally due to the number of briefs filed, their length and the extended period in which they are presented.

The number of cases in the Supreme Court, now uncalendared, presents a problem that challenges the attention of the bar, said Justice Edmonds. On December 31, 1939, there were 523 such cases, of which 317 were in the Los Angeles district, 132 in the San Francisco district, and 74 in the Sacramento district. Only five weeks before that date, 129 cases had been transferred to the District Courts of Appeal. They were thus statistically out of the way of the Supreme Court, but the litigants' rights had not been determined. Considering them as still pending, there were 652 cases undetermined. Almost exactly two-thirds of them are Los Angeles cases. A few of the Los Angeles cases were filed in 1936, but the great majority were filed in 1937; whereas, the San Francisco cases, with few exceptions, were filed in 1938 and 1939. Almost none of the Sacramento cases are more than one year old.

REASON FOR DELAY

"To the bar and the public of Los Angeles County," said Justice Edmonds, "the greater delay which occurs in the hearing of their cases is of primary importance. The explanation is a simple and entirely mathematical one. Over 60 per cent of the Supreme Court cases are those of Los Angeles litigants. Yet for many years the court has been holding only four of its 10 calendars here. The result is, of course, inescapable. Each year 20 per cent more cases are filed than are heard, although this number is cut down somewhat by transfers to district courts of appeal. On the other hand, San Francisco with 25 per cent of the total business has been receiving 40 per cent of the court's

time and the cases from the northern interior counties are nearest up to date because the court holds two calendars a year in Sacramento, 20 per cent of the total number, although that district supplies only 14 per cent of its business.

"Stating the effect of this practice in another way, during a period of 33 months ending June 30th last, the court placed 115 appeals upon its calendars for hearing in the first instance; that is, none of these cases had been taken over for hearing after decision in a district court of appeal. Of these, approximately one-third were Los Angeles cases, in very few of which the transcripts had been on file less than one year. Yet practically all of those from San Francisco and Sacramento were called for argument within that period.

"This is also due to the present practice of placing all cases in which hearings are granted after decision by a district court of appeal upon the next calendar after the petition is granted; hence they crowd out those cases within the original appellate jurisdiction of the Supreme Court and these have to wait for hearing or transfer. As the calendars are now arranged, many cases within the original appellate jurisdiction of the District Court of Appeal pass through that court and are heard and decided by the Supreme Court in less time than cases taken directly to the Supreme Court.

"Recently the court increased the number of calendars to be heard in Los Angeles in 1940 by one, so that if the schedule fixed by the order now in effect is carried out, the number of Los Angeles cases appealed directly to the Supreme Court reaching the calendar for argument this year will increase by approximately 10 per cent.

"Turning to the court work as a whole, in the year ending June 30, 1939, there were 450 appeals and 154 original proceedings filed in the Supreme Court. About 30 per cent of the appeals are dismissed before hearing and more than one-half of the original proceedings are disposed of in conference upon a consideration of the petition and memorandum of authorities.

"A second class of cases comprise those reaching the court by petition for hearing after decision in a district court of appeal. In the last year, there were 471 of such cases. Each year has shown a steadily decreasing number of such petitions, the total of 1939 being one-third less than that of 1935. The percentage of such petitions which are granted is about 20 per cent. These added to the judicial business within the original jurisdiction of the court make a total of a little less than 500 cases in a twelve month period. From this total 'companion cases' should be deducted, that is, those cases which are separately carried on the docket but depend for decision upon the determination reached in another. These comprise at least 5 per cent of the total, so that what may be termed the court's case load per annum of direct appeals, cases taken over for hearing and original proceedings, does not exceed 475 per year.

"This number should be considered as a maximum because it is well known that a court's business increases proportionately with the number of months in which its decisions are delayed. I have no doubt that if the Supreme Court was hearing all appeals within six months after they were filed, and deciding them promptly, that there would be a decrease of at least 20 per cent in the number of cases filed. The opportunity for considerable delay in the determination of lawsuits not only begets litigation but invites appeals where there is little meritorious basis for them."

OFFICERS AND TRUSTEES INSTALLED BY-LAWS AMENDED

AT the regular monthly meeting of members, February 15, the following officers and trustees for 1940 were installed:

Herbert Freston, President; J. C. Macfarland, Senior Vice-President; George M. Breslin, Junior Vice-President; Ewell D. Moore, Roy V. Reppy, Isaac Pacht, Harry J. McClean, John G. Clock, Frank M. Moody, William C. Mathes, Jerold Weil, Alexander Macdonald, Frederick F. Houser, Arthur L. Erb.

The following amendments to the Constitution and By-Laws were adopted:

"Section 2. BOARD OF TRUSTEES. The Association shall have a Board of Trustees made up of the president, the senior vice-president, the junior vice-president, the chairman of the Junior Barristers and eight additional trustees elected from the active members of this Association; and if there be one or more affiliated associations, one additional trustee from each affiliated association, not to exceed four in all, and not more than one trustee to be elected from the membership of any one affiliated association. Any such trustee so elected from an affiliated association must be an affiliated member of this Association. The Board of Trustees shall at their first meeting after their installation appoint a secretary and a treasurer and such other officers as the By-Laws may require. These officers shall have such qualifications as the Board may from time to time determine and, at the option of the Board, the office of treasurer and secretary may be held by one person.

Section 3. ELECTION AND TERM OF OFFICE. The president, the senior vice-president and the junior vice-president shall be elected by the members at the annual election of the Association, and shall hold office for one year and until the installation of their successors. The election of the chairman of the Junior Barristers shall be provided for in the By-Laws. The installation of officers and trustees shall take place at the annual meeting of members."

"ARTICLE IX.

CONCERNING JUDICIAL CANDIDATES

Section 1. The Standing Committee on Judicial Candidates and Campaigns heretofore created under this section prior to this amendment shall be continued, the members thereof to hold office for the terms for which they were appointed. Upon the expiration of the term of each member, his successor shall be appointed for a period of six (6) years. Such appointment shall be made by an Appointing Board composed of the President of the Association, the ten (10) past presidents next in order who reside and practice law in the County of Los Angeles, and the Presidents of the Affiliated Associations as defined by Article VI of the By-Laws. The Appointing Board shall meet at the call of the President or of any three (3) members.

As soon as the list of candidates for any election for judges of the Superior Court of the County of Los Angeles, or of the Municipal Court of the City of Los Angeles, shall have been determined by the filing of petitions, or otherwise as the law may require, then and thereafter it shall be the duty of the Committee:—

(a) To cause to be prepared and mailed to every member of the State Bar of California and judges in Los Angeles County a list of all candidates for each office, in such form as may be prescribed by the Board of Trustees, with re-

quest to said members of the Los Angeles County Bar and judges to express an opinion upon the qualifications of the respective candidates appearing on said ballot, and further requesting that said lawyers and judges so addressed, after marking said ballot, return same within a time to be fixed by the Committee, to the office of the Los Angeles Bar Association; after said time has expired for the return of said ballots, the same shall be canvassed as directed by the Committee and the results thereof made public by said Committee in an announcement which shall record an endorsement by the Los Angeles Bar Association for the candidate for each office who receives the largest number of 'qualified' votes; provided, however, that in the event no candidate for an office receives a greater number of 'qualified' votes than 'unqualified' votes, then no endorsement shall be made for that office.

(b) Prior to the mailing of the ballots as in subdivision (a) set forth, to request in writing from the candidates for each office on which there is a contest that a biographical sketch be submitted, which sketch shall be released by the Committee to legal publications in the County of Los Angeles, for publication, without expense to the Association, concurrently with or prior to the mailing of the ballots as herein provided for, and to send with each ballot the list of the publications and their dates of publication in which said biographical sketches appear.

(c) In the event a vacancy occurs upon the Superior Court of Los Angeles County or the Municipal Court of the City of Los Angeles, by reason of death, resignation or other cause, and a list of those being considered by the Governor for appointment to said vacancy is furnished to the Association for the purpose of the Association taking a plebiscite to be used in assisting the Governor in making said appointment, the Board of Trustees may conduct a plebiscite among the members of the State Bar and judges in Los Angeles County for the purpose of determining the qualifications of the respective candidates and submit the result of said plebiscite to the Governor. In taking such plebiscite the Board of Trustees may determine the form of ballot to be used and procedure to be followed."

BULLETIN COMMITTEE'S REPORT FOR 1939

THE BAR BULLETIN was produced and delivered to all members of the Association during the calendar year 1939, at a net loss of only $413.70. In other words, the general fund of the Association was called upon to make up the ultimate difference between the revenue from advertising and the cost of production, in the above amount. The actual operating loss was $791.03, but a discount of $377.33 was voluntarily given by Parker & Baird Co., the publishers, leaving the actual deficit $413.70. The Committee regards the year's operations as highly gratifying, and believes that thanks are due Parker & Baird Co. for handling the advertising accounts from which the costs of printing and mailing were paid.

THE BULLETIN has been maintained upon the high standard it has long enjoyed as the Association's official organ. We believe it is a distinct asset to the Association, and a service to the members that should be both informative and helpful. Many of the articles contributed by members during the year have been of outstanding excellence, on a wide variety of subjects. The contest conducted by the committee, ably assisted by the Junior Barristers' BULLETIN Committee, for the three best articles submitted by members not over 35 years of age, was productive of twelve excellent articles, heretofore printed in the BULLETIN. These alone, because of the exhaustive research work by the respective authors, should prove most valuable to other members who may have cases in which the groundwork has been performed by the writers.

The names of the winners of the contest have already been printed in the BULLETIN, but the Committee takes this opportunity of commending the work of each and every one of those who entered the contest. Even though some of them were not awarded a prize, their cooperation is appreciated, and no doubt their efforts will be rewarded in the approval of the entire membership of the Association. It is hoped that many of the younger members have been stimulated to write on subjects of interest to the profession, and the Committee hopes to induce them to continue their worthy efforts in this field during the coming year.

The Committee is considering the suggestion to conduct a similar contest for 1940, in which case it will request the Board to authorize us to offer a cash prize from the Association.

Attached is detailed financial statement for 1939, prepared by Parker & Baird Company. It shows that the gross income from advertising for the twelve months was $1,773.00, and the total cost of printing, mailing and incidentals, $2,186.70. Deducting the discount referred to, left a deficit of $413.70.

Accounts receivable as of December 31, 1939, totaled $342.00. This sum, if all of it is collected, will be reflected in the 1940 operating statement.

EWELL D. MOORE,
Chairman.

Committee:
JOHN J. FORD
CHAS. R. BAIRD
A. F. HALSTEAD, JR.
F. WALTON BROWN
WARREN STRATTON
ROBERT E. MOORE

DIGEST OF RECENT DECISIONS

By Sidney H. Wall, of the Los Angeles Bar

Commencing with this issue, The Bulletin, through the efforts and cooperation of Sidney H. Wall, a member of the Junior Barristers Bulletin Committee, will present a "Digest of Recent Decisions" of current interest to the Judiciary and Bar. Although particular attention will be given to decisions of the California Courts, it is the intention of the Bulletin Committee and of Mr. Wall to furnish, from time to time, Federal and "out of state" cases of more than usual interest and importance. The Bulletin Committee will welcome any comments which readers of The Bulletin may wish to make concerning the usefulness of this information and the mode and manner in which the case material can be most interestingly and advantageously presented.

ACCOUNTS STATED: An account stated is established where a statement of account is rendered and not objected to within a reasonable time. *Doyle v. McPherson*, 99 C. A. D. 632.

ACTIONS: A superior court having jurisdiction of one cause of action also has jurisdiction of other causes of action properly joined with the first one. *Parmely v. Boone*, 99 C. A. D. 425.

APPEALS: On an appeal on the judgment roll alone the alternative method of appeal may be used and time does not commence to run until written notice of entry of judgment is given. *Benson v. Gardner,* 98 C. D. 382.

An appeal does not lie from a consent judgment or from an order refusing to set it aside. *Hunter v. Sup. Ct.,* 99 C. A. D. 646.

BUILDING AND LOAN ASSOCIATIONS: Power of building and loan commissioner to employ special counsel in connection with the affairs of an association he is liquidating is upheld. He acts as a trustee of a private trust. *Evans v. Sup. Ct.,* 98 C. D. 405.

COMMUNITY PROPERTY: A wife can recover the value of household furniture sold by the husband without her consent although it was in storage at the time of sale. *Matthews v. Hamburger,* 99 C. A. D. 712.

CONTEMPT: An order to show cause served on the attorney for a party and not on the party himself does not justify a contempt order. *Matter of Classen,* 99 C. A. D. 685.

CONTRACTS: A contract is illegal as being in restraint of trade which prohibits one party from manufacturing a similar machine at any time within ten years without the consent of the other party. *Hunter v. Sup. Ct.,* 99 C. A. D. 646.

Loss of profits from an established business may be recovered in an action for breach of contract of agency. *Brunvold v. Johnson,* 100 C. A. D. 39.

CONTRACTS FOR BENEFIT OF THIRD PERSON: A brother is under no legal duty to support his sister and if another supports the sister at the request of the brother there is no implied promise on the part of the brother to pay for such support. *Rotea v. Izuel,* 98 C. D. 431.

CONSTITUTIONAL LAW: Ordinance prohibiting leaving hand-bills on premises without owners consent upheld. *Buxbom v. Riverside,* 29 F. Supp. 3.

CORPORATIONS: Corporate entity will be disregarded where the assignee corporation of a lease was organized for the sole purpose of acquiring the lease and had no other assets. *Shea v. Leonis,* 98 C. D. 471.

Forfeiture of its charter by a Delaware corporation for failure to pay taxes merely suspends its existence and later reinstatement validates acts done while charter was suspended. *Watts v. Liberties etc. Corp.,* 106 Fed. (2d) 941.

A director has an absolute right of inspection and a stockholder a limited right of inspection of corporate records, the limitation being that he is acting in good faith. These are common law rights which have not been abridged by statute. *Drake v. Newton etc. Corp.,* 9 Atl. 2 (N. J.) 635.

CORPORATIONS—REORGANIZATION: A state statute providing for corporate reorganizations and the appointment of receivers is void because superseded by the Federal Bankruptcy laws. *Bank v. Robinson* (C. C. A. 10), U. S. Law Week, 11-14-39, p. 520.

COURTS: A nunc pro tunc order correcting a clerical error may be made by the court, without notice and either on motion or by its own action. *Carpenter v. Pacific etc. Ins. Co.,* 98 C. D. 495.

EXECUTORS: Probate court on hearing final account has jurisdiction to pass on objection of a legatee that certain property claimed by the executor personally belonged to the estate. *Est. of Gump,* 99 C. A. D. 686.

GUARDIANS: An alleged incompetent person must be allowed to testify in his own behalf; more than poor business judgment is required to establish incompetency. *Guardianship of Waite,* 98 C. D. 511.

HUSBAND AND WIFE: A reconciliation between husband and wife has the effect of cancelling a property agreement to the effect that receipts from the services of each shall be separate property. *Mundt v. Conn. Ins. Co.,* 99 C. A. D. 351.

The community estate is entitled to reimbursement for community funds used by a deceased husband to pay taxes on his separate property. *Estate of Turner,* 99 C. A. D. 459.

JUDGMENTS: An order vacating an order on a notice of motion which fails to state any ground therefor under C. C. P. 473 is nevertheless merely erroneous and not void upon its face. *Moran v. Sup. Ct.,* 99 C. A. D. 485.

In determining whether a summary judgment shall be ordered a court will not allow legal conclusions in affidavits to vitiate the statement of particular facts. *McComsey v. Leaf,* 99 C. A. D. 677.

LANDLORD AND TENANT: Space in a department store is held under a lease and not a license where an optometrist occupied it, paid 20 per cent of his sales or "rental" and the parties treated it as a lease. *Beckett v. Paris,* 98 C. D. 450.

MANDAMUS: Mandamus does not lie to review the final order of a zoning board exercising discretionary powers. *Rubin v. Board,* 100 C. A. D. 23.

MORTGAGES: A purchaser at execution sale of the interest of one of the mortgagors, when such purchaser is not made a party defendant to a later foreclosure suit, cannot assert any rights against the mortgagee who purchases at the foreclosure sale for the full amount of the mortgage debt without paying the mortgagee his share of the indebtedness. *Tutt v. Van Voast,* 100 C. A. D. 73.

MUNICIPAL CORPORATIONS: A city under a freeholders charter has all powers relating to municipal affairs as to which the charter or state constitution contain no limitations. The enumeration of certain powers does not exclude the existence of other powers not mentioned. Under the San Francisco charter which contains no express limitations a tax for revenue purposes can be levied upon the licensing of the business of outdoor advertising. *West Coast Adv. Co. v. S. F.,* 98 C. D. 375.

NAVIGABLE WATERS: Santa Monica Bay, between its headlands is territorial water of the state and subject to state policing power. *People v. Stralla,* 98 C. D. 440.

NURSERY TREES: After termination of a contract to purchase real property, nursery trees on the land may be removed by the purchaser; they are not growing crops. *Story v. Christin,* 98 C. D. 423.

RIGHT OF PRIVACY: When a wife has committed suicide by jumping from a building her husband has no cause of action based upon a right of privacy or common law copyright against a newspaper publishing the picture of the wife which picture was stolen from the home by some unknown person. *Metter v. Examiner,* 99 C. A. D. 281.

RULE AGAINST PERPETUITIES: A trust which is to continue an indefinite period and until an indebtedness secured by it is paid violates the rule against perpetuities. *Est. of Gump,* 99 C. A. D. 686.

SALES: The manufacturer of a re-tread tire can be held liable for negligent fabrication in an action by the ultimate buyer and user of the tire. *Nebeling v. Norman,* 98 C. D. 459.

STORM WATER DISTRICTS: Taxes by such districts cannot be levied upon personal property. *So. Pac. Co., v. Riverside,* 99 C. A. D. 329.

SUPERIOR COURT: Each department is a distinct body and no judge in another department can make a valid order while a matter is pending in the original department. *Williams v. Sup. Ct.,* 92 C. D. 464.

TRUSTS: Trustor in a subdivision trust who is also a beneficiary is held to have an interest which is personal property and not real property. *Wright v. Bank,* 99 C. A. D. 254.

WATERS: A property owner may defend his property from flood waters which have escaped from a water course. *Mogle v. Moore,* 99 C. A. D. 364.

Use of water to maintain the level of a lake for recreational purposes is not a wasteful use. *Elsinore v. Water Company,* 99 C. A. D. 655.

WILLS: A holographic will need not be signed at its end if decedent's intention that the instrument operate as a will is clear and the name is written elsewhere. *Est. of Kinney,* 100 C. A. D. 3.

ZONING: A complete structural alteration in an existing building destroys any right it formerly had to exist as an exception under a zoning ordinance. *Hopkins v. MacCullough,* 99 C. A. D. 374.

WHY DID NO ONE EVER TELL US THIS BEFORE?

By Wendy Stewart, LL. B., M. D.*

THE question can never be settled as to whether the total sum of human suffering having a direct physical basis and calling for the application of medical skills is any greater than the sum of human suffering which could be prevented by a proper application of legal knowledge in conjunction with sound social principles. Physical illness and the pain of physical injury are in many instances more easily tolerable than the mental and emotional anguish which may accompany litigation, especially in the field of domestic relations. These uncomfortable effects in the latter as well as in the former case may cause distress not only to the individual primarily concerned, but also to his friends and relatives, to his business associates, and to the community at large. Hence the people as a whole have an interest in the application of preventive measures.

While the medical profession has for a considerable period engaged actively in a variety of ways in the development and application of the principles of preventive medicine, nothing comparable has been accomplished in the field of law.

In the endeavor to formulate a similar line of action as applied to legal difficulties and their accompanying discomforts, the writer has for the comparatively brief period of the past seven years spent in practising law, applied

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an interest in the preventive phases of medicine and mental hygiene to the consideration of the problems encountered. Each case has been considered not only from the standpoint of what was necessary for its immediate handling in order to yield the most satisfactory results for the client under the circumstances as they existed at the time at which it was presented, but also as a matter of private research from the standpoint of what different steps could have been taken earlier and at what different stages in the development of the difficulty up to the point at which an attorney's advice was being sought, which might have resulted in an avoidance of the difficulty entirely, or in placing the client in a more advantageous position than was in fact the case, as regards either his legal rights, or the availability of evidence with which to establish them.

Out of this study emerge a great variety of hypotheses, a number of theories which are gradually taking shape and which may become more substantial by confirmation through an adequate number of repetitions of similar sets of facts followed by similar results; and two conclusions of the validity of which the writer is sufficiently certain to feel that they should form the basis of concrete recommendations.

One may be dismissed with a few words as being outside the primary scope of this article. It is that a great many domestic difficulties are caused, or enhanced, or both, by the absence of a well-organized and widely available plan of sound sex education. It is of importance to recognize that this lack adversely affects the relationships between parents and children as well as those between husband and wife; that the parent's ignorance or misinformation often results in a failure to understand the child, or in the child's developing a feeling of the parent's insufficiency; that these in turn may lead to disciplinary problems, to major and minor delinquencies on the part of the child, to conflicts with the law, and to the general detriment of the community at large. The recommendation to be founded upon this conclusion is properly directed to boards of education and to parent-teacher organizations in the endeavor to bring about the necessary changes in the school curriculum.

The other conclusion gives rise to recommendations which are properly to be directed to boards of education, to parent-teacher organizations, and to the members of the legal profession, and is the basis for this article.

Some cases of distress and anxiety having their origin in the legal aspects of a person's affairs are caused by legislative defects in the sense that a particular provision of the law may fail to coincide with social justice when applied to the facts of an instant case. However, a far greater number of cases may be attributed less to *what the law is* than to *not knowing what it is.* In many of the instances in which application of the law works a hardship, the unhappy result could have been avoided had the individual affected known what the law was and acted accordingly.

John Doe's wife, Jane, deserts her husband and their two children, Henry and Mary. For the next twenty years, John works hard and saves all the money he can, with the children's future and security in mind. He then dies, and since he was a resident of California and his entire estate consists of his earnings, which are community property, Jane may claim it in its entirety. While it may be argued that the resulting hardship to Henry and Mary is attributable to defects in the California statutes and the remedy is a legislative one by restoring to children a right in the community property of parents, such as was formerly theirs, or providing that the earnings of a California husband, at any rate after a certain period of desertion on the part of the wife, should be his separate property, as are her earnings in the case of her living separate and

apart from him, the immediate cause of the sad plight of Henry and Mary under the law as it now exists in California is their father's ignorance of it.

He could have protected their interests to the extent of leaving them one-half of the property by will, had he known the legal importance of this step; while to give them the maximum of protection he should have obtained a divorce from his wife on the grounds of her desertion, thereby rendering his earnings thereafter his separate property, and securing their descent to the children. From the standpoint of protecting his children's future he should thus seek a divorce regardless of his own intentions in favor of or scruples against remarriage.

If, owing to his ignorance and failure to take appropriate action, Henry and Mary find themselves unexpectedly penniless, they can scarcely be blamed for developing a somewhat antisocial attitude and a grudge against a social order in which such things could be possible.

As another example, we might take the case of Janet Roe, who, after the death of her husband, goes to work and from her personal earnings supports her two children, William and Margaret. After several years, she marries Richard Brown, who shortly thereafter refuses to allow her to spend any portion of her earnings upon food or clothing for her children. She perhaps then realizes for the first time that her earnings are community property, and subject to Richard's management and control and that she has therefore no legal right to use them for the benefit of the children without his consent; and at the same time learns that he may refuse to care for the children at all, having, as a step-parent, no legal responsibility for their support. It may be argued that the matter will probably be solved by Janet's obtaining a divorce. Whether she can do so upon the real "ground" of her husband's refusal to care for her children or to permit her to care for them from her earnings, might be questioned upon the basis that it can scarcely be termed "extreme cruelty" for a man to deal as he pleases within his legal rights regarding property; and probably the divorce, if any, must be sought upon some other ground. Even assuming that a divorce is in fact obtained and that there is no such complicating factor as Janet's having had children as the issue of the brief marriage with Richard, a considerable amount of social damage has been done and a high degree of mental and emotional trauma sustained by Janet and the children. The sense of insecurity which William and Margaret would be likely to experience during the period taken up by the legal adjustment of the difficulty would most probably affect them adversely and might well hinder their satisfactory adjustment to society.

In this case, Janet's duty to her children could have been carried out by an agreement with Richard, prior to the marriage, that at least a certain proportion of her earnings should be subject to her own management and be devoted to the care of her children, preferably with an additional clause to the effect that in the event of her giving up her employment at Richard's request, or of its interruption by pregnancy, that Richard would assume responsibility for the support of her children by the former marriage.

The foregoing examples have been selected as exemplifying the adverse effects upon children of their parents' ignorance of the law. Attorneys who read this article will have little difficulty in multiplying the examples from their own experience.

The community property system cannot be branded as wholly bad; nor can it be said to be illsuited to the needs of every conceivable type of family. However, criticism of it is prevalent among attorneys and others who have experience of its injustices, and most people would agree that the financial cir-

cumstances of every couple should be examined in the light of the existing community property law and that sound legal advice to one or the other spouse or to both of them, would frequently include the recommendation that an agreement be made changing the status of some part at least of their present and potential future property.

Married couples may with mutual advantage agree that any compensation or award for pain and suffering for personal injuries should be the separate property of the party experiencing the injury. Such an agreement would obviate the husband's assumption of the management and control of the entire amount awarded to the wife, with consequent injustice to her, as for example if he buys a yacht with the money in spite of her known tendencies to seasickness. It also would protect the husband against the possibility that immediately after his receiving an award for his injuries, the wife might obtain a divorce, and in the accompanying division of the community property secure an appreciable portion of it. If such an agreement is made at a time at which it is unknown which of the parties will later suffer injury, they may be spared considerable mental anguish and social injustice. Probably, too, such an agreement entered into before the cause of action arose, would permit the injured wife to receive an award for her personal injuries when riding as a passenger in an automobile, in a case in which the husband who was driving was contributorily negligent, and would avoid a possible denial of such award on the ground that the award if made would be community property, and therefore subject to the management and control of the husband, and that to make such an award to the wife would therefore be improper as permitting the husband to benefit from his own wrong.

If the wife is to continue earning after marriage it seems reasonable that a portion at least of her earnings should be subject to her own control. Much emotional distress and many legal difficulties might be avoided by an agreement that each spouse should contribute a certain equitable proportion towards such necessary household expenses as food, shelter, utilities and clothing; and that each spouse should have some funds not so earmarked and free from any interest and control of the other spouse.

Attorneys in general are aware that members of the general public are ignorant of the laws relating to domestic relations and to the community property system and this ignorance has been tangibly manifested to the writer in the following three instances.

First, a client who finds himself in a legal difficulty which results from his own ignorance or that of someone else, is justifiably enraged to find that the difficulty is one which could have been prevented but as to which it is now too late to do anything.

Second, for the past five years, the writer has lectured on Commercial Law in the Sawyer School of Business in Los Angeles and during that time has had the opportunity to study the reaction to the material presented, of several hundred students, between the ages of approximately 18 and 25, some of them being University graduates and some of them being married, but the majority being high school graduates and unmarried. Many of them have previously had a course entitled "Commercial Law" in high school or in Junior College.

Third, during the same five-year period, the writer has lectured to classes in the Civic Center Division of the School of Government of the University of Southern California, the past three years having been devoted to lectures on "Social Legislation," including the legal aspects of family relations and the property rights of the family. The students are in this case almost all University graduates, actively employed in social work in public or private agencies, a large proportion of them being married and many of them having children.

In both these courses, after each lecture which deals with family relations and family property rights, presenting to the students apparently for the first time, the elements of the community property law, the frame of mind of the students, as deduced from class discussion following the lecture, which is invariably prolonged informally into the hallways and elevators on the way from class, is a sense of outrage, represented by the title of this article, which is a remark quoted from a student: "Why did no one ever tell us this before?"

There is a definite feeling that somebody should be responsible for seeing that the facts are told; and they do not look far before coming to feel that the responsibility rests upon those whose experience should tell them of the need, and that means us—the lawyers.

Because the necessary knowledge should as far as possible be made available to all, it is the writer's belief that the proper place for instruction is in the school curriculum, probably at high school level. Many high schools now have, usually as an elective subject, Commercial Law, Law of the Family, or a similar course. Ordinarily the instructor is not a lawyer. It seems to the writer that there is a certain amount of futility in having such a course taught even by one who is an excellent teacher if he is not a practising attorney, with experience as to just how the provisions of the law affect the daily lives of people, and with an up-to-date repertoire of practical examples from his own experience to illustrate important points. This is especially so in view of the fact that a recent inquiry disclosed the fact that a basic text book in common use in California, after discussing to some extent dower and courtesy rights, dismissed the entire subject of community property by stating (quite correctly) in small type at the end of the chapter:

> "In some states a new form of co-ownership is created by statutes. Under the provisions of these statutes the husband and wife have a *community interest* in the property acquired jointly. The nature of such an interest varies according to the terms of the different statutes."*

It seems to the writer that it *is* the responsibility of the legal profession to see that the public as a whole become adequately informed for their own protection and the avoidance of much discomfort and unhappiness. To accomplish this will involve not only the filling in of gaps in their present defective education; but also, of course, the counteracting of the misinformation concerning legal matters which repeatedly impinges upon the public at large from such sources as motion pictures, the radio and the press. Judging from the writer's personal observations of a comparatively small number of motion pictures, a large proportion of them, for example, must contain such lines as "I am going to Reno" as synonymous with the declaration that a divorce will be sought, thereby undoubtedly lending strength to the popular belief in the validity of Reno divorces for everybody regardless of residence, and capable of causing much distress to a person so misinformed. *It is suggested that committees which are concerning themselves with the relations between the public and the legal profession and protesting the current distorted depictions of the lawyer on the screen, should also seize every opportunity to urge the discontinuance of such misrepresentations of the law as may further popular misconceptions and cause incalculable harm.*

As a class project in connection with classes on Social Legislation students were recently asked to assemble a list of "Common Fallacies Concerning the Law," to represent the difference between the student's belief concerning the law

*Peters and Pomeroy, Commercial Law, South Western Publishing Company, Cincinnati, 1932, at p. 14.

at the time of entering the class and the actual knowledge gained from the lectures given. The lists of such misconceptions assembled by University graduates during the three months over which the course extended were formidable; and the items included in many cases startling as indicating grave potentialities of human distress had action been taken in the belief that the concept was a true one.

Ultimately, the school curriculum should contain a well-organized presentation by a practising attorney, of the fundamentals of the law as they concern personal relations, the family, and its property rights, and everyday affairs. The attorney should have been in practice sufficiently long to have such adequate practical experience as will yield vivid illustrations and must be accomplished as a public speaker, and more particularly as one with the special capacity of making himself understood by and interesting to the school-age audience, which is one of the most exacting and difficult to "hold." It is important that the speaker be able to speak to young people in their own language and of the appropriate personality to capture their interest. The job is not one to be undertaken by attorneys just starting in practice because they have some spare time which could be devoted to it; but an important task to be carried out only by those thoroughly equipped for the purpose. As an important public service and recognized part of the school curriculum, it should of course carry adequate compensation.

Pending such time as curricula are adapted to meet this need, individual attorneys, and the bar associations, should encourage school principals and others to arrange for attorneys to appear as speakers before the students in appropriate classes.

The State Junior Bar Conference, having already set up and perfected methods of organization for arranging for the appearance of speakers in relation to their crime prevention program, might well utilize the same administrative machinery to put into effect a program of lectures on preventive civil law.

An active program of this nature should be carried on by the organized legal profession and its individual members in the thought that, by a strange paradox, it is our duty, as it is that of the members of the medical profession, to be forever striving to reduce the necessity for our services. However, the incidental result is to bring the attorney before the young citizen in the capacity of a friend and advisor, giving general information for his protection, and warning him against future difficulties, as well as equipping him to recognize certain situations as fraught with legal problems calling for the professional services of a lawyer, which the citizen would be the more ready to seek because of this favorable presentation of the lawyer to him. Thereby he might be kept out of troubles of one kind or another, which, as the writer sees it, is one of the main objectives of any program designed to improve the relationship between the members of our profession and the public, the program itself being carried out in the spirit that:

> "All action taken by any professional group must be bottomed on gain thereby to be secured to the public whom they serve, and if, as an incident to such gain the servants also benefit, the latter must be of secondary consideration."*

*Maguire, Robert F.: Social Effects of Overcrowding, 23 A. B. A. Journal (1937) p. 85.

THE ENGLISH BAR

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(Continued from January Bulletin)

COMPLETE DEMOCRACY

Among Members of the Bar themselves, a very rigid if rather corporate democracy exists. There is never a question of "master and man" in the profession. All advocates whether "silks" or "stuff gownsmen" are equal, and the youngest "Junior" addresses the most Senior K. C. by his surname. The word "Mr." or the title "Sir" are never used between Gentlemen of the Inns of Court. This applies equally to Judges out of Court, as even they resent the formal "Sir" of other walks of life. Indeed the Lord Chief Justice is reported to have replied to a youthful Counsel whose club he was visiting and who addressed him respectfully as "Sir"—"Both you and I are Members of the Bar, and if you address me again as 'Sir' I'll call you 'Your Holiness'!"

Within two years of "call" to the Bar it is customary for a young barrister to join a "Circuit." England-and-Wales is divided into several circuits, and in these areas, assizes are held at which all criminal cases, and many civil suits —including, nowadays, divorce cases,—are tried. Formerly the King himself went on circuit, but for many centuries His Majesty has sent Commissioners of Assize to represent him. The Commissioners, who are appointed by Royal writ for each assize, are usually High Court Judges, but County Court Judges and King's Counsel may be appointed. The Commissioners, as the King's direct representatives, are received with great ceremonial by the High Sheriffs in each of the Assize towns. Each Circuit has a group of Barristers who "go" the circuit. Before the days of railways the Gentlemen of the Bar went on circuit with a good deal of the pomp and circumstance which now attends the Judges. Some of the ancient customs are still preserved. Each circuit has its Mess, and a room is reserved in the principal hotel of each assize town for this Mess. The Gentlemen of the Bar dine together, and still maintain a little cellar of their own wine at each headquarters which is shared at dinners in the fraternal spirit of our great profession.

THE CIRCUITS

A Barrister may not belong to more than one circuit. He may, however, join the Central Criminal Court Bar (The Old Bailey), and either the North or South London Sessions,—he cannot join both. These bodies have a very useful function. After answering at the opening of session for a period of two years, the Barrister is placed on the "Soup List," i. e., if he appears at the opening of session, after his name has been placed on the list, he will by rota be allotted cases to defend, for which the County bears the cost, and cases to prosecute, which are not considered of sufficient importance to be taken by well-known counsel. The system of District Attorneys is not known in England, —where a Barrister may both prosecute and defend in the same Court on the same day.

Another practice which is perhaps peculiar to England is the "Dock" Brief. Any person accused of an indictible offence in one of the criminal Courts mentioned above, instead of applying for Counsel upon arrest, may choose to wait until he actually appears in Court. The Judge will ask him if he wishes to be defended by learned Counsel, to which he may reply that he would like a

*This article was written by Mr. Gladston, for THE BULLETIN, during his recent visit to Los Angeles.

"Docker." The Judge will thereupon request him to produce the sum of one pound three shillings sixpence (approximately $5.75) and if he is able to do so, he will be instructed to select one of the Counsel present in Court from among those wearing Wig and Gown. The Prisoner will then designate a Barrister from the dock, and that Counsel (unless he be the Prosecutor in the case) will be compelled to undertake the defence for the sum of one pound three shillings sixpence, of which he retains a guinea and hands two shillings and sixpence to his Clerk. It makes no difference if the Prisoner designates a Barrister of one day's standing, or the Attorney-General himself. The Barrister designated, if he is robed, can not refuse to appear. Dock Briefs and "Soups" are the only occasions when Counsel may appear in a contentious matter without the intervention of a Solicitor.

SPECIALIZATION

When a Barrister has attained such a degree of seniority or so large a practice that he no longer is dependent on the comparatively sure income of a successful Barrister, he may specialize in some branch of the Law, and confine most of his work perhaps, to advocacy in Court. In such case he may desire to become a King's Counsel, and if he succeeds he becomes "One of His Majesty's Counsel learned in the Law," and theoretically, appointed to attend to His Majesty's interests in the various Courts of Law. The procedure for attaining this exalted rank is an application to the Lord Chancellor, which, if the applicant is of sufficient standing, is usually followed by "His Majesty's Patent." Unlike the admission of a Barrister, which takes place in his Inn, the "bowing in" of a "Silk" takes place in the High Court itself.

After being sworn in before the Lord Chief Justice, the new K. C. attends in all the dignity of silk gown, court dress, and full bottomed wig, and upon his appearance in Court, the presiding Judge says: "Mr. Smith, His Majesty having been pleased to appoint you one of his Counsel learned in the Law, will you take your place within the Bar." The new "Silk" then takes his place in the front row of the seats reserved for Counsel, and bows in turn to the Judge, the other K. C.'s, and the Junior Bar. The Judge then inquires, "Mr. Smith, do you move?" to which the only reply is another obeisance. The neophyte K. C. then withdraws, and repeats the performance in each of the Courts which happen to be sitting.

Taking "Silk" may be both a benefit, and a great liability. As a "stuff gownsman," Counsel has probably been content with comparatively small fees, but on taking "Silk" his price in the labor market has greatly advanced. He may not defend a prisoner without a license of the Home Secretary, nor can he appear in Court without a Junior Barrister. Thus, a client who wishes to engage a K. C. must pay the cost of the Solicitor, who briefs the Junior Barrister, the Junior Barrister, who briefs the "Leader," and the K. C. himself, who, in his turn, must be given a "Refresher" for every day after the first occupied by the case. Furthermore a K. C. may not sign or settle pleadings. It stands to reason therefore, that unless a Barrister be outstanding in his field, or else possesses a small fortune, it is a great speculation for him to "take Silk."

When a Barrister is first called to the Bar, he may wish to profit from a wider practice than he could obtain for himself without years of experience behind him. He will then seek to become a "pupil in Chambers." He is not allowed to work in a minor capacity for a firm, as may the young Solicitor, or as is the practice of attorneys in the U. S. A., since no employer-employee relationship, nor associate relationship, is admitted or recognized at the Bar. He will therefore pay some older and more successful Barrister the regulated

sum of fifty guineas for six months, in order to have the privilege of sharing his Chambers, reading his briefs, and attending his master in Court, and from time to time taking cases for his master when the latter is unable to attend. For this a "pupil" is not paid, although some chambers allow him a nominal fee out of courtesy for "devilling," i. e., taking the case of another barrister when that barrister is unable to appear himself.

FIRST SIX YEARS

Unlike the young American attorney who keeps a wife, a car, and other expensive luxuries, from his salary as employee in a firm of attorneys, the English Barrister must somehow or other be able to support himself for the first six years of his career. For today, it takes six years before a Barrister can "cover" his expenses. This prohibits the young man who wishes to get rich quick, from "reading for the Bar" in order to attain that end. Indeed, it is regrettable that many young barristers lead a life of refined and dignified poverty, when their counterparts in the U. S. A. are living in a much greater material, though perhaps a trifle cruder, luxury.

The U. S. A., however, is not without debt to the Bar of England, quite apart from its heritage of the Great English Common Law. In 1774 a Congress, irregularly but enthusiastically chosen, met at Philadelphia and voiced the grievances of twelve colonies. It was presided over by Peyton Randolph of the Middle Temple, and although it ordered a boycott of English goods, opened the way to a settlement, if the English people and their Parliament had been in a more conciliatory mood. The Declaration of Independence owed much to the Temple. It was drafted by Thomas Jefferson of Virginia "the child of the Middle Temple" and settled by a committee on which served a well known Templar lawyer, John Dickinson. Indeed, perhaps of greatest interest to Americans who visit the Temple is a copy of the Declaration which hangs at the entrance to Middle Temple Library, to which is appended the signature of no less than five Middle Templars who were destined to hold high judicial office in the new nation. They were Edward Rutledge, who became Governor of S. Carolina; Thomas Heyward, Jr., afterwards Judge of the High Court of S. Carolina; Thomas McKeon, a future Governor of Pennsylvania; Thomas Lynch, and Arthur Middleton, both of S. Carolina.

Not only do American citizens come to the Inns of Court and get called to the English Bar, but some remain to adorn it in England. Several legal advisors to the American Embassy have been practising Barristers in England, although not British Subjects, and in this respect, there is no reciprocity. The U. S. refuses to allow non-citizens to practise in the Federal Courts. This applies also to most of the State Courts, the State of California being a notable exception until as recently as 1931.

No one denies that the need for Anglo-American cultural co-operation is today greater than ever. It certainly would not injure the legal system in the U. S. if it should, by a generous gesture, allow Members of the English Bar the same right to qualify and practise as their American confréres have enjoyed from time immemorial in England.

Applications for employment as associate lawyers, law clerks, secretaries and stenographers are always on file at the office of the Association. Members are urged to make use of this service. They may do so by examining the applications on file or by advising the office of their needs. Telephone TUcker 8118.